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~~SUPREME COURT, U. S.~~

In The  
**Supreme Court of the United States**  
October Term, 1964

No. [REDACTED] 111

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA, PETITIONER,

V.

EVELYN KIRCHNER, Administratrix of the Estate  
of ELLINOR GREEN VANCE, RESPONDENT.

(Petition for Writ of Certiorari to the Supreme Court  
of the State of California)

**AMICUS CURIAE BRIEF OF THE STATE OF NE-  
BRASKA IN SUPPORT OF THE PETITION FOR  
WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF CALIFORNIA. FILED BY THE  
STATE OF CALIFORNIA.**

CLARENCE A. H. MEYER,  
Attorney General  
MEL KAMMERLOHR,  
Assistant Attorney General  
*Attorneys for the State of Nebraska,  
Amicus Curiae.*

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The presently standing opinion of the Supreme Court of the State of California reported in 60 AC 704, 388 P. (2d) 720, 36 Cal. Rptr. 488 (1964), seriously places in question the validity of pertinent statutes of the State of Nebraska which are similar in language but identical in principle to the California statute considered by the Supreme Court of the State of California. The validity of the Nebraska laws is put in doubt as a

result of the opinion and decision of the Supreme Court of the State of California which so broadly applies the Equal Protection Clause of the Constitution of the United States so as to bring within its prohibition the classification of persons responsible for the care and maintenance of patients in state institutions under the California statutes and likewise those of the State of Nebraska.

The applicable Nebraska statutes are found in Chapter 83, Article 3, Nebr. Rev. Stats. Supp. 1963, to wit:

83-352. "If any patient in a state hospital for the mentally ill, or the spouse, child, or parent of such patient, is possessed of an estate and income sufficient to meet the expense of the patient's care and maintenance in the hospital without depriving those dependent upon such patient or relative of their necessary support, the guardian, spouse, child, or parent of such patient shall pay to the superintendent of the hospital, quarterly during the time the patient is in the Norfolk State Hospital, the Hastings State Hospital, or the Lincoln State Hospital, a sum to be fixed by the Department of Public Institutions which shall be an amount equal to the average per capita cost of maintaining the patients in the Norfolk State Hospital, Hastings State Hospital, and Lincoln State Hospital; and quarterly during the time the patient is in the Nebraska Psychiatric Institute, a sum to be fixed by the department which shall be an amount equal to the average per capita cost of maintaining the patients in the Norfolk State Hospital, the Hastings State Hospital, the Lincoln State Hospital, and the Nebraska Psychiatric Institute. Such costs shall be the same costs charged to counties for keeping such patients. If any patient is being maintained, as provided in section 83-829 or 83-329.02, and the patient or the spouse, child, or parent of such patient, is possessed of an estate or

income sufficient to meet the expense of the patient's care and maintenance without depriving those dependent upon such patient or relative of their necessary support, the guardian, spouse, child, or parent of such patient shall pay to the county a sum equal to the cost of maintaining the patient, as provided in section 83-329 or sections 83-329.02 to 83-329.04, but in no case more than four dollars per day. In actions brought under this section, the burden shall be on defendant to allege and prove that he is not possessed of an estate or income sufficient to meet the expense of the patient's care and maintenance without depriving those dependent upon him of their necessary support. The amounts to be paid under this section shall constitute a claim against the estate of the patient and be collectible therefrom; *Provided*, that amounts so paid by the county shall be considered a continuing open account and in actions brought within the time set forth in section 25-206 recovery may be had for the entire amount paid by the county. The Auditor of Public Accounts shall certify quarterly to the county clerk of each county the amount of the per capita cost and the names of all patients admitted to a state hospital from such county upon behalf of whom payments have not been made by any relatives. It shall be the duty of the county board of each county to investigate all unpaid claims and cause action to be brought in the name of the county by the county attorney to recover thereon, where it is probable that some recovery can be made."

It thus appears that the thrust of the opinion and decision of the Supreme Court of the State of California seriously impugns the substantially similar statutes of the State of Nebraska. The Attorney General of the State of Nebraska is deeply concerned about the grave issues raised in this case and presented in the instant petition for certiorari filed in this court.

The State of Nebraska, by Clarence A. H. Meyer, Attorney General of the State of Nebraska, hereby adopts and joins in the position, reasons advanced for the granting of the petition for certiorari and argument of the State of California in the above entitled matter, as contained in the petition for certiorari filed in this court.

Respectfully submitted,

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Assistant Attorney General,  
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Nebraska, Amicus Curiae.*